

URS DISPUTE

Dispute number: **D99DCA22**
Determination **DEFAULT**

I. PARTIES

Complainant: Reima Oy
Riika Paakkunainen
Karhumäentie 3, 01530 Vantaa, Finland

Complainant's Authorized Repr.: Berggren Oy
Milla Lehtoranta
Eteläinen Rautatiekatu 10 A, 00100 Helsinki

Respondent:

II. THE DOMAIN NAME(S), REGISTRY OPERATOR AND REGISTRAR

Domain name: **reima.top**
.top registry
104.31.86.98|104.31.87.98
dynadot llc

III. PROCEDURAL HISTORY

Complaint Submitted: 2018-03-26 14:25
Lock of the Domain name(s): 2018-03-27 12:00
Notice of Complaint: 2018-03-27 12:09
Default Date: 2018-04-11 00:01
Notice of Default: 2018-04-11 09:43
Panel Appointed: 2018-04-11 09:45

IV. EXAMINER

Examiner's Name: **Dorota Rzazewska**

The Examiner certifies that he/she has acted independently and impartially and to the best of his/her knowledge has no known conflict in serving as the Examiner in this administrative proceeding

V. RELIEF SOUGHT

The Complainant requests that the domain name be suspended for the balance of the registration period

The Respondent has not filed a Response

VI. STANDARD OF REVIEW

Clear and convincing evidence.

VII. DISCUSSIONS AND FINDINGS

A. Complainant

The Complainant asserts that the domain name <reima.top> is identical to the Complainant's national and regional trademark registrations for REIMA, which are in current use, these including inter alia the following marks:

- European Union Trademark registration 'REIMA' (word) No. 498311 ('European Union Trademark') filed with the European Union Intellectual Property Office ('EUIPO') on 24 March 1997 for goods encompassed inter alia in class 25 of the Nice Classification ("Headgear and clothing, except footwear, socks and stockings") and registered on 14 April 2000;

- Finnish Trademark registration 'REIMA' (word) No. 94065 ('Finnish Trademark') filed with the Finnish Patent Office on 28 May 1984 for goods encompassed inter alia in class 25 of the Nice Classification ("clothing, footwear, headgear") and registered on 21 October 1985;

- Finnish Trademark registration 'REIMA' (word) No. 256854 ('Finnish Trademark') filed with the Finnish Patent Office on 9 March 2012 for services encompassed inter alia in class 35 of the Nice Classification ("retail and wholesale of clothing, accessories, shoes, textiles, bags, toys and sporting goods, sales services in the data network and online store") and registered on 31 October 2012;

- European Union Trademark registration 'REIMA' (word and device) No. 2043503 ('European Union Trademark') filed with the European Union Intellectual Property Office ('EUIPO') on 18 January 2001 for goods encompassed inter alia in class 25 of the Nice Classification ("Headgear, clothing, except footwear, socks and stockings") and registered on 19 June 2002;

- Russian Trademark registration 'REIMA' (word and device) No. 1297914 ('Russian Trademark'), for goods encompassed inter alia in classes 25 ("clothing, footwear, headgear") and 35 ("retail and wholesale services, sales services provided via computer networks and electronic commerce in relation to clothing, accessories, shoes, textiles, bags, toys, sports equipment and electronic monitoring instruments") of the Nice Classification.

The Complainant simultaneously asserts that he is the owner of the Finnish company name (business identifier) Reima Oy, where the element Oy - being an indicator of legal form (Ltd.) - cannot be considered in similarity assessment.

Further, the Complainant explains that Reima Oy - incorporated and based in Finland - is a globally leading and well-known brand for functional children's wear.

The Respondent, as the Complainant claims, has no legitimate right or interest to the disputed domain name as the Complainant has never given the Respondent any authorisation to use his registered REIMA trademarks.

As to the disputed domain name being registered and used in bad faith, the Complainant asserts the Respondent intentionally attempts to attract - for commercial gain - Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

In addition, the Complainant claims that the Respondent is trying to pass off as the Complainant pretending to be an official webstore of REIMA, the overall look and feel of the website on the disputed domain name being - in the Complainant's regard - very similar to the Complainant's official webstore on the domain name reima.com.fi, or at least to its older version. Further, in the Complainant's regard, the Respondent is trying to take unfair advantage of the well-known character and reputation of the Complainant's designations.

Finally, in support of this thesis, the Complainant encloses evidentiary support in the form of printouts from both websites for comparison.

B. Respondent

The Respondent has not filed any Response.

C. Procedural findings

Having reviewed the communications records, the Examiner finds that MFSD has discharged its responsibility under the URS Procedure paragraphs 3 and 4 and URS Rules paragraph 4

In absence of a Response, the language of the Determination shall be English, pursuant to paragraph 9(d) URS Rules.

D. Findings of Fact

The disputed domain name <reima.top> was registered on 17 November 2017 by the Respondent and resolves to a website offering children's clothing to customers, and uses both the word sign 'REIMA' and its graphic representation.

The Complainant has demonstrated to be the owner of the following trademarks registered with priority with regard to the disputed domain name:

- European Union Trademark 'REIMA' (word) No. 498311 registered with EUIPO on 14 April 2000 with priority as of 24 March 1997 inter alia in class 25 of the Nice Classification ("Headgear and clothing, except footwear, socks and stockings");

- Finnish Trademark registration 'REIMA' (word) No. 94065 registered with the Finnish Patent Office on 21 October 1985 with priority as of 28 May 1984 in class 18 of the Nice Classification and not - as the Complainant asserts - inter alia in class 25;

- Finnish Trademark registration 'REIMA' (word) No. 256854 registered with the Finnish Patent Office on 31 October 2012 with priority as of 9 March 2012 inter alia in class 35 of the Nice Classification ("retail and wholesale of clothing, accessories, shoes, textiles, bags, toys and sporting goods, sales services in the data network and online store");

- European Union Trademark REIMA (word and device) No. 2043503 registered with EUIPO on 19 June 2002 with priority as of 18 January 2001 inter alia in class 25 of the Nice Classification ("Headgear, clothing, except footwear, socks and stockings");

- International Trademark REIMA (word and device) No. 1297914 [referred to as Russian Trademark by the Complainant] (International Trademark) registered with the World Intellectual Property Organisation ('WIPO') on 19 November 2015 with subsequent designation via Madrid Protocol for Russia on 22 September 2016, i.e. with priority in Russia as of 22 September 2016, and protected inter alia in classes 25 and 35 of the Nice Classification (class 25: "clothing, footwear, headgear"; class 35: "retail and wholesale services, sales services provided via computer networks and electronic commerce in relation to clothing, accessories, shoes, textiles, bags, toys, sports equipment and electronic monitoring instruments").

Furthermore, the Complainant is the owner of the Finnish company name (business identifier) Reima Oy, where the element Oy is not distinctive as it serves only as an indicator of legal form (Ltd.), the company itself having been registered yet on 27 June 2008.

The Complainant also has a website located on the domain name reima.com.fi where he runs a webstore offering children's clothing under the brand REIMA.

As regards the disputed domain name, the Complainant asserts that he has never authorised the Respondent in any way to register and/or use his REIMA trademarks.

The disputed domain name resolves to the website on which the Respondent runs a webstore with the use of the Complainant's signs. Graphics, colours, layout of the Respondent's website do resemble the webstore of the Complainant, i.e. its older version submitted by the Complainant.

E. Reasoning**1. The domain name(s) is(are) identical or confusingly similar to a word mark**

The Complainant has provided sufficient documentary evidence to prove his ownership and prior rights in the trademark "REIMA" since 1984 in various jurisdictions.

All trademarks indicated by the Complainant as basis for the Complaint, except for one - Finnish trademark 'REIMA' (word) No. 94065 - are protected for class 25 goods (clothing items) and/or class 35 services (retail and wholesale services).

Evidence of use submitted by the Complainant proves that the "REIMA" trademark is in use.

Accordingly, pursuant to the relevant URS provisions - paragraph 1.2.6.1 URS Procedure and paragraph 3(b)(v) URS Rules - the Examiner finds that the Complainant has prima facie satisfied the threshold requirement of having trademark rights for purposes of standing to file a URS case.

Even though some of the Complainant's trademarks are registered as word and device marks, and paragraph 1.2.6.1 URS Procedure provides for word marks, the Examiner, based on the URS case No. 369B0FE1 concerning the domain name <dpd.solutions>, shares its prior sound findings and determinations cited therein, affirming that the use of the wording word mark set forth in the mentioned paragraph 1.2.6.1 URS Procedure does not specifically exclude trademarks which are combined of a word and a graphical element, provided the word element is clear as well as sufficiently distinct and separate from the graphical element. Such consideration meets the Examiner's view and is utterly accepted in the case at issue, all the more that it is the word element REIMA that constitutes the core of the Complainant's trademarks and the device element is limited to mere graphical and colour representations of the word at issue.

Identity of the domain name with the Complainant's trademark.

The Examiner finds that the disputed domain name and the Complainant's trademarks are identical both visually and aurally (phonetically) with regards to REIMA element - they share the same number of identical letters used therein. Accordingly, the second-level domain (the part before the dot) and the Complainant's trademarks are pronounced identically.

As regards the meaning of the sign REIMA, the Examiner asserts that no specific meaning may be assigned from the perspective of the Internet users and, therefore, the comparison should be limited to visual and phonetic aspects only, as indicated above.

The URS and the UDRP Panels usually agree that the TLD (.top in this case) is disregarded in determining identity or confusing similarity between the domain name and the Complainant's marks. The .top suffix of the disputed domain name is of merely descriptive character and has no influence on distinctiveness of the Disputed Domain Name.

Additionally, the analysis of the evidentiary support submitted by the Complainant leads to the conclusion that not only the disputed domain name is identical with the Complainant's trademark, but also the website to which the disputed domain name resolves uses the Complainant's trademarks (both word and graphical representation, though the latter in a reversed colour set), in a manner that may give rise to the risk of confusion amongst Internet users (e.g. the marks REIMA are identically located in the top-left corner of the analysed websites). The Examiner also finds that the design of the Respondent's website under the disputed domain name is highly similar to the design of the Complainant's website, i.e. its older version submitted by the Complainant, with regard to the layout and red colour of the background.

Under the aforesaid circumstances, the Examiner finds that the requirements set forth under Paragraph 1.2.6.1(i) URS Procedure have been satisfied.

2. Respondent has no rights or legitimate interests to the domain name(s)

As no Response was submitted by the Respondent in the case at issue, the Respondent has failed to justify any potential rights or legitimate interests in the disputed domain name.

Furthermore, the disputed domain name is registered with privacy or proxy service and no underlying registrant information has been disclosed by the Registry.

Therefore, there is no evidence available for the Examiner showing that the Respondent is commonly known by the disputed domain name and/or is somehow entitled to lawfully use the disputed domain name.

Notably, the Complainant has unambiguously stated that the Respondent had not been authorized by the Complainant to use his 'REIMA' signs - registered both as a word and in graphical forms - and that there is no business relationship between the parties.

Under these circumstances, and in the absence of evidence to state otherwise, the Examiner hereby finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name, pursuant to the requirements set forth under Paragraph 1.2.6.2 URS Procedure.

3. The domain name(s) was(were) registered and is(are) being used in bad faith

The disputed domain name resolves to the website that displays identical and/or similar elements located on the domain name <reima.com.fi> as described under point 1 above, where the Complainant operates a webstore offering children's clothing under the brand REIMA.

Moreover, the disputed domain name functions in a convergent manner to the Complainant's website <reima.com.fi> with respect to services provided (webstore offering children's clothing).

The abovementioned leads the Examiner to determination that the disputed domain name was registered primarily for the purpose of disrupting the business of the Complainant. Furthermore, by using the disputed domain name the Respondent intentionally attempts to attract, for commercial gain, the Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of the Respondent's website or of the service offered on the Respondent's website operating under the domain name <reima.top>.

This conduct falls squarely under the circumstance enumerated under the URS Procedure, which demonstrates bad faith registration and use by the Respondent. Therefore, the Examiner finds that the requirements set forth under Paragraph 1.2.6.3 (c) and (d) - URS Procedure have been satisfied.

4. Abusive Complaint

The Examiner finds that the Complaint is neither abusive nor contained a deliberate material falsehood.

VIII. DETERMINATION

A. Demonstration of URS elements

After reviewing the entire record of the URS proceeding and the Parties' submissions, the Examiner shall determine if the Complainant has or has not demonstrated all three elements of the URS by a standard of clear and convincing evidence

Demonstration of URS elements	Demonstrated
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B. Complaint and remedy

The Examiner shall decide whether to accept or reject the Complaint and, therefore, order the domain name(s) be suspended for the balance of the registration period or be unlocked and returned to the full control of the Registrant

Complaint	Accepts
Domain Name(s)	Suspends for the balance of the registration period

C. Abuse of proceeding

The Examiner may find that a Complaint is abusive or contains deliberate material falsehood

Finding of abuse of proceedings	Not finds
Ban from utilization of URS	

D. Suspension or Termination

If legal proceedings were initiated by a Party or the Parties prior to or during the URS proceeding, the Examiner may order the suspension or termination of the URS dispute or decide to proceed to the Determination URS proceeding

E. Publication

Publication [Publish the Determination](#)

SIGNATURE

Name [Dorota](#)
Surname [Rzazewska](#)